IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.361 OF 2006

Nusli Neville Wadia
of Mumbai Indian Inhabitant,
having his office at Neville House,
J.N.Heredia Marg, Ballard Pier,
Mumbai - 400 023. .. Petitioner

V/s

1. The New India Assurance Co.Ltd.
   being a Government Company,
   incorporated under the provisions
   of the Companies Act, 1956 and having
   its Head Office at the New India
   Assurance Building, 87 Mahatma Gandhi
   Road, Fort, Mumbai - 400 001.

2. Mr.N.M.Goyal,
   being the Estate Officer purportedly
   appointed under the provisions of the
   Public Premises (Eviction of Unauthorised
   Occupants) Act, 1971 and also the
   Deputy Manager of Respondent No.1,
   having his office at the New India
   Assurance Building, 4th Floor,
   87, Mahatma Gandhi Road, Fort,
   Mumbai - 400 001. .. Respondents

Mr.R.A.Dada, Senior Advocate with Mr.Percy Ghandy and Mr.A.Gokhale i/by M/s.Crawford Bayley & Co. for the Petitioner.
Mr.V.Y.Sanglikar for Respondent No.1.

CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 03.03.2006.

JUDGMENT:- (Per Dr.S.Radhakrishnan, J.)

1. Heard the learned Counsel for the parties. Rule. Rule is made returnable forthwith by consent. The learned Counsel for the Respondent No.1 waives service. The presence of Respondent No.2 is not necessary for the purpose of disposal of this petition, as he is a formal party.

2. The basic challenge in the Petition is with regard to two orders passed by Respondent No.2-Estate Officer dated 26.08.2005 being Exhibit ‘M’ and another order dated 12.01.2006 being Exhibit ‘Q’ to the petition. The Petitioner also seeks inspection and better particulars. The brief facts are that the Petitioner is a lawful monthly tenant of Flat No.B/27 on the 5th floor of the building known as Mayfair Gardens, Little Gibbs Road, Malabar Hill, Mumbai - 400 006, (hereinafter referred to as the ‘said premises’). It appears that the Petitioner was lawfully inducted in the said premises on 1st October, 1972 as a genuine lawful tenant. The Petitioner has been regularly paying all the rent and permitted increases to Respondent No.1 which is a nationalised Insurance Company. Suddenly, the Petitioner received a notice dated 09.02.2001 from Respondent No.1 terminating the monthly tenancy of the Petitioner. The Petitioner by his letter dated 28th March, 2001 replied to the same. However, no further steps were taken by Respondent No.1. After about a year, on 18th February, 2002, the Petitioner received another notice from Respondent No.1 again terminating the tenancy which was also replied to by the Petitioner by his reply dated 27th March, 2002. It may be noted that even after issuance of the second termination notice dated 18th February, 2002, the Respondent No.1 did not take any further steps and the Petitioner continued to pay the regular rent and other necessary

charges which were duly accepted by Respondent No.1. On 28th July, 2003, i.e. about one and half year after the second termination notice, the Respondent No.2 -Estate Officer issued two show causes notices, one for eviction under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the said Act" for brevity sake) and another under Section 7 of the said Act for payment of damages. The Petitioner had sent a detailed reply with regard to both the aforesaid show cause notices by his Advocate's letter dated 23rd February, 2004 reserving the right to challenge the Constitutional validity of Section 3 of the Public Premises Act before the Hon'ble Supreme Court. It appears that the Petitioner did file a Writ Petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court challenging the Constitutional validity of Section 3 of the Public Premises Act, wherein it appears that Rule was granted by the Hon'ble Supreme Court on 10th September, 2004. In the said petition, the Hon'ble Supreme Court had made it clear that the proceedings before the learned Estate Officer may go on but the final order in the matter be not passed. The Petitioner without prejudice to the aforesaide petition, had filed his reply on 3.9.2004 to the application of Respondent No.1 dated 25.1.2003 for eviction. The Petitioner contends that the Petitioner has been appearing before the Respondent No.2. The Petitioner by his letter dated 7th March, 2005 appears to have called upon the Respondent No.1 to furnish

inspection and better particulars of various documents relied upon by the Respondent No.1. In that behalf, a further reminder was sent on 18th June, 2005. It appears that at the hearing before the Respondent No.2 on 26th August, 2005 as the learned Counsel for the Petitioner could not remain present before the Respondent No.2 Estate Officer and a request was made that the matter be kept back for a little while as the learned Counsel of the Petitioner was busy before the High Court. It appears that the Respondent No.2 had refused to keep back the matter and proceeded to pass an exparte order directing the Petitoner to lead evidence in the matter and file an affidavit in evidence. On 26.9.2005 Petitioner took out an application pointing out that the Respondent No.1 had not given proper inspection and proper particulars and details as demanded by the letter dated 7th March, 2005. It was also pointed out that there is no question of Petitioner leading any evidence first and the Respondent No.1 has to first lead the evidence to discharge the burden of proof. The Petitioner had also pointed out that the Respondent No.1 had filed a case before Respondent No.2 under the provisions of the said Act alleging that the Respondent No.1 has a reasonable and bonafide requirement of the said premises and as such it is for the Respodnent No.1 to first discharge the burden of proof by leading evidence first. After the Respondent No.1 discharges the burden of proof, then only the onus will shift to the Petitioner to disprove the case made

out by the Respondent No.1. It was also pointed out that the Petitioner in law can never prove the negative viz. the Respondent No.1 does not reasonably and bonafide require the said premises even before the Respondent No.1 had led evidence in support of its case. Therefore, the Petitioner has submitted that the Respondent No.2 ought to direct the Respondent No.1 to give proper inspection of the documents, frame the issues and thereafter direct the Respondent No.1 to file affidavit of evidence in support of its case and offer itself for cross-examination. It was the contention of the Petitioner that only after Respodnent No.1 completing evidence of all the witnesses and after completion of cross-examination of the said witnesses by the Petitioner, the Petitioner could be asked to file affidavit of evidence and be subjected to cross-examination. The Respondent No.2 Estate Officer appears to have heard the Petitioner on 6.12.2005 on the above issue and finally passed an order on 12.1.2006 rejecting the Petitioner's aforesaid application dated 26.9.2005. The said order dated 12th January, 2006, is impugned in this Petition.

3. Mr.Dada, the learned Senior Counsel appearing on behalf of the Petitioner has strongly contended that the main grievance of the Petitioner is that the Petitioner cannot be asked to lead evidence first and prove the negative. According to him, it is for the Respondent No.1 to lead the evidence first so as to establish that

Respondent No.1 requires the said premises for reasonably and bonafide personal use. Mr.Dada, brought to our notice the grounds on which the eviction was sought by Respondent No.1 by an application filed before the Estate Officer dated 25th June, 2003, wherein five grounds are mentioned, which read as under:-

(i) The Applicants need and require the application premises for their own use and occupation for accommodating their own senior executives,

(ii) The Applicants are being evicted from tenanted premises and are being called upon to pay exorbitant rent for tenanted premises. Hence it is not in public interest not to resume possession of the Application premises,

(iii) Increase in business, globalisation of economy and liberalisation of policies have necessitated the Applicants to use and occupy the Applicants' own properties,

(iv) The tenancy and authority of the Opponent has been duly terminated by the Applicants' notice dated 18.2.2002,

(v) The Opponent is a rich and wealthy industrialist who has several flats for his residence.

4. Based on the aforesaid application of the Respondent No.1, Respondent No.2-Estate Officer had issued a show cause notice dated 28th July, 2003 calling upon the Petitioner to show cause as to why the petitioner should not be evicted, wherein four grounds are mentioned, which read as under:-

(i) The Applicants need and require the premises for their own use and occupation for for accommodating the Applicants' senior executives,

(ii) The Applicants are being evicted from tenanted premises and are being called upon to pay exorbitant rent for tenanted premises and hence it is not in

public interest not to resume possession of these premises,

(iii) Your tenancy and authority is terminated by the Applicants' notice dated 18.02.2002,

(iv) You are a rich and wealthy occupant having your own accommodation.

5. The above notice has been issued under Section 4 of the Public Premises (Eviction of Unauthorised Ocupants) Act, 1971 which contemplates that the notice should specify the grounds on which the order of eviction is proposed to be made.

6. Mr.Dada, brought to our notice a letter dated 14th January, 1992 written by the Ministry of Urban Development, Government of India regarding the issuance of the Guidelines under the Public Premises Eviction Act with regard to public statutory undertakings. The said letter was issued pursuant to the Hon'ble Supreme Court's judgment in the case of **Ashoka Marketing Limited V/s.Punjab National Bank- AIR 1991 SC 855,** wherein the Hon'ble Supreme Court has directed that the proper Guidelines should be provided to prevent an arbitrary use of the provisions of the Public Premises Eviction Act to evict the genuine tenants from the public premises under the control of Public Sector Undertakings and Financial Institutions. The said letter also reiterates the observations of the Hon'ble Supreme Court that every activity of the Public Authority should be guided by public interest and that they were expected to deal with their tenants distinctly from that of private

landlords. The said letter also mentions that several representations against the eviction proceedings have been received by the Ministry for issuance of Guidelines so that the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are not indiscriminately used by public statutory organisations to oust the genuine tenants. The said letter also mentions that it has been decided to prescribe for the benefit of all these organisations a set of guidelines in order to prevent use of the provisions of the said Act to evict genuine tenants and to limit the use of summary powers primarily to unauthorised occupants and retired employees. The said letter also proceeds to lay down the broad guidelines indicating that the said Act should primarily be used to evict totally unauthorised occupants or illegal sublettees or the employees who have ceased to be in their services and thus ineligible for occupation of the premises. The said letter also indicates that the persons who are in lawful occupation of the premises should not be treated or declared as unauthorised occupants merely on service of notice of termination of tenancy. When a genuine tenant is to be evicted, the genuine grounds available under the Rent Control Act of the State ought to be utilised for resuming possession.

7. Mr.Dada, the learned Senior Counsel for the Petitioner has pointed out that the Government of India through the Ministry of Urban Development and Poverty

Alleviation (Directorate of Estates) has passed a resolution dated 30th May, 2002. The same has been duly gazetted on 8th June, 2002. It is known as **Guidelines to prevent arbitrary use of powers to evict genuine tenants from the public premises under the control of Public Sector Undertakings/Financial Institutions,** wherein relevant guidelines are found in clause 2, which reads as under:-

> "To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under Section 3 of the PP (E) Act, 1971, it has been decided by Government to lay down the following guidelines:-
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> (i) The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (P.P.(E) Act, 1971) should be used primarily to evict totally unauthorised occupants of the premises of public authorities or subletees or employees who have ceased to be in their service and thus ineligible for occupation of the premises.
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> (ii) The provisions of the P.P.(E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.
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> (iii) A person in occupation of any premises should not be treated or declared to be an unauthorised occupant merely on service of notice of termination of tenancy, but the fact of unauthorised occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the P.P.(E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the Public Undertakings should immediately review all pending cases before the Estate officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the PP (E) Act, 1971 should be used henceforth only in accordance with these guidelines."

8. Mr.Dada, the learned Senior Counsel for the Petitioner has contended that in the light of the above guidelines, if the Respondent No.1 wants to evict the Petitioner, the Respondent No.1 should move under the genuine grounds of the State Rent Control Act for resuming possession. In the instant case, primarily two grounds are sought to be made out; (i) that there is reasonably and bonafide requirement of the said premises by Respondent No.1 and (ii) that the Petitioner has already acquired an alternate accommodation, and as such, the Petitioner is not entitled to continue in the said premises. Mr.Dada, the learned Senior Counsel for the Petitioner has submitted that with regard to both the above grounds available under the State Rent Control Act for the purpose of eviction, it is the Respondent No.1 who should first establish the above grounds, in the sense, firstly the Respondent No.1 should establish that the Respondent No.1 requires the said premises reasonably and bonafide for personal use and secondly

the Respondent No.1 should also establish that the Petitioner has already acquired another accommodation and as such he is liable to be evicted from the said premises. Therefore, it is the contention of Mr.Dada, the learned Senior Counsel, that the order of Respondent No.2-Estate Officer dated 12th January, 2006 directing the Petitioner to lead the evidence first, before Respondent No.1 leading evidence, is totally perverse and would result in travesty of justice. He made it explicitly clear that the Petitioner is desirious of proceeding before the learned Estate Officer viz.Respondent No.2, provided the Respondent No.1 leads its evidence first, and thereafter, after cross-examination of the witnesses of the Respondent No.1, the petitioner will lead his evidence to rebut the same and can be subjected to cross-examination. Mr.Dada therefore contended that in the facts and circumstances of the present case, it would be just and proper to direct the Respondent No.1 to lead the evidence first and allow the Petitioner to cross-examine the Respondent No.1's witnesses and thereafter allow the Petitioner to lead his evidence in rebuttal and can be subjected to cross-examination. In support of this contention, Mr.Dada referred to and relied upon the decision of the Hon'ble Supreme Court in the case of **Ganpat Ram Sharma & Ors. V/s Smt.Gayatri Devi - AIR 1987 SC 2016,** wherein in Paragraph No.21 the Hon'ble Supreme Court has observed as under:-

"Before we discuss the other aspect the result of the several decisions to which reference has been made above indicate that the position in law is that the landlord in order to be entitled to evict the tenant must establish one of the alternative facts positively, either that the tenant has built, or acquired vacant possession of or has been allotted a residence. It is essential that the ingredients must be pleaded by the landlord who seeks eviction but after the landlord has proved or stated that the tenant has built, acquired vacant possession or has been allotted a residence, whether it is suitable or not, and whether the same can be really an alternative accommodation for the tenant or not, are within the special knowledge of the tenant and he must prove and establish those facts....."

9. Mr.Dada, the learned Senior Counsel appearing for the Petitioner thereafter referred to and relied upon the Division Bench judgment of the Allahabad High Court in the case of **Girija Debi and Another V/s.Rent Control and Eviction Officer and Others - AIR 1965 Allahabad 366,** wherein it is observed as under:-

"Actually the onus is upon the landlord to satisfy the District Magistrate about his bonafide need; It is not upon a claimant for tenancy to prove that the landlord has no bonafide need. With great respect to the learned Judges, we cannot agree that if the claimant fails to prove that the landlord does not require the accommodation for his own personal occupation, it must be held that he has bonafide need for own personal occupation. What the landlord has to prove cannot be held to be proved because the other party fails to prove the contrary."

10. Mr.Dada thereafter referred to and relied upon the judgment of the Delhi High Court in the case of **Chander Kishore Sharma and Another V/s Smt.Kampa Wati - AIR 1984 Delhi 14**, wherein the relevant observation is as under:-

"One must remember that the initial burden to prove the ground of eviction is on the landlord and not on the tenant. Tenant cannot be asked to prove the negative."

11. Mr.Dada, the learned Senior Counsel appearing for the Petitioner has also referred to and relied upon the judgment of the Madhya Pradesh High Court in the case of **Jernail Singh V/s. Kanhaiyalal - AIR 1986 MP 53,** wherein the relevant observation in Paragraph No.9 of the judgment reads as under:-

> ".... I observe that according to the settled proposition of law, it is for the Plaintiff and Plaintiff only to prove the fact of non availability of non-residential alternative premises in the town and not the Defendant".

12. Mr.Dada, the learned Senior Counsel for the Petitioner has strongly contended that in the instant case, as the above guidelines make it abundantly clear that if in case of a genuine and lawful tenant eviction is sought, it can only be sought on the grounds permissible under the State Rent Control Act and it is for Respondent No.1 to prove that it needs the premises reasonably and bonafide for personal use and that it is also for the Respondent No.1 to prove that the Petitioner has acquired another alternate accommodation and hence he is liable to be evicted. Mr.Dada has further submitted that the Petitioner cannot be made to lead evidence to prove the negative viz. the Respondent No.1 does not really, reasonably and bonafide need the premises for personal use or that the Petitioner himself has acquired any alternate premises so as to enable the Respondent No.1 to evict the Petitioner. This would virtually amount to putting the cart before the horse.

Mr.Dada has submitted that it would be an impossibility on the part of the Petitioner to establish that the Respondent No.1 does not require the said premises reasonably and bonafide for personal use, inasmuch as all the evidence and facts with regard to the same are within the personal knowledge of the Respondent No.1.

13. Mr.Dada, the learned Senior Counsel for the Petitioner while referring to the Supreme Court's judgment in the case of **Ashoka Marketing Limited V/s.Punjab National Bank** relied upon the observations of the Hon'ble Supreme Court in paragraph No.69, which read as under:-

> "It has been urged by the learned Counsel for the Petitioners that many of the corporations referred to in Section 2(c) 2(ii) of the Public Premises Act, like the nationalised Banks and the Life Insurance Corporation, are trading corporations and under the provisions of the enactments whereby they are constituted these corporations are required to carry on their business with a view to earn profit, and that there is nothing to preclude these corporations to buy property in possession of tenants at a low price and after buying such property evict the tenants after terminating the tenancy and thereafter sell the said property at a much higher value because the value of property in possession of tenants is much less as compared to vacant property. We are unable to cut down the scope of the provisions of the Public Premises Act on the basis of such an apprehension because as pointed out by this Court in **M/s.Dwarkadas Marfatia and Sons v.Board of Trustees of the Port of Bombay, (1989) 3 SCC 293 : (AIR 1989 SC 1642 at p.1649)** :-
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> > "Every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigour of the Rent Act must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent,

in respect of dealing with tenants in respect of which they have been treated separetely and distinctly from other landlords on the assumption that they would not act as private landlords must be judged by that standard."

These observatios were made in the context of the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 whereby exemption from the provisions of the Act has been granted to premises belonging to the Bombay Port Trust. The consequence of giving overriding effect to the provisions of the Public Premises Act is that premises belonging to companies and statutory bodies referred to in Cls.(2) and (3) of S.2(e) of the Public Premises Act would be exempted from the provisions of the Rent Control Act. The actions of the companies and statutory bodies mentioned in Cls.(2) and (3) of S.2(c) of the Public Premises Act while dealing with their properties under the Public Premises Act will, therefore, have to be judged by the same standard."

14. Mr.Dada thereafter referred to the 2002 Guidelines which were gazetted, which clearly contemplate in no uncertain terms that if any public sector undertaking has to evict the genuine lawful tenant, then they should establish the genuine grounds available under the State Rent Control Act for the purpose of such eviction. Mr.Dada brought to our notice the Division Bench judgment of our High Court in the case of **Persis Kothawala V/s LIC of India & Ors. - 2002 (4) Bom.C.R. 610**. The paragraph No.66 of the said judgment reads as under:-

"As rightly pointed out by Mr.Chagla, section 21 of the L.I.C. Act contemplates that the directions by the Central Government should be in writing and such directions should direct the LIC to discharge its functions and the same should relate to the policy involving the public interest. In the present case, the Respondent LIC in its affidavit dated 11th

November, 2003 in paragraph No.4 has clearly stated "when LIC asked for increased rent in consonance with State's policy, LIC acts in its capacity as a lessor, it is incumbent on LIC to carry on its business and manage its affairs on sound commercial principles...." Similarly, in paragraph No.7 in the affidavit dated 11th November, 2003 in Writ Petition No.2516 of 2003, the LIC has also categorically stated that the "overwhelming public interest and the interests of crores of policy holders requires us to revise rent of our properties". If that be so, the LIC cannot turn around and say that they have no statutory force. It would be rather anomalous when repeatedly the Central Govt.for the last 10 years has been issuing letters, circulars etc. and directing the various public sector undertakings to strictly adhere to the aforesaid guidelines and finally the Central Government even thought it fit to issue a Government Resolution on 30th May, 2002 and gazetted it on 8th June, 2002. In the above, the directions from Central Government are in writing. The respondent LIC in its affidavits has admitted that the increase in rent is part of its business and also that there was overwhelming public interest to benefit crores of policy holders. If that be so, all the aforesaid three criteria contained in section 21 of LIC Act have been complied with, then the said Guidelines will have to have statutory force. We do not find any substance in the argument of Mr.Singhvi that the guidelines will have to issue only under Section 21 of LIC Act and in the instant case as the guidelines have not been issued under Section 21, therefore they do not have statutory force. A bare perusal of Section 21 indicates that LIC has to follow the guidelines issued by the Central Government, while LIC is discharging its functions under the Act. The aforesaid section does not mention that the Central Government will be isuing guidelines under that section. What is important is that LIC shall be guided by the directions issued by the Central Government, while LIC is discharging its functions under that Act. We do not find any substance that the guidelines will have to be necessarily issued under Section 21. Hence we hold that 2002 guidelines have statutory force."

15. Mr.Dada also pointed out that the aforesaid Division Bench Judgment in **Persis Kothawala's case** holds that in any event the 2002 Guidelines were cleary binding on the LIC and the LIC was bound to follow the same. Mr.Sanglikar, the learned Counsel for Respondent

No.1 fairly states that the Respondent No.1 has been following the said 2002 Guidelines and will follow the same. Mr.Dada, the learned Counsel for the Petitioner has contended that the Petitioner is ready and willing to proceed with the hearing before the Estate Officer provided the Respondent No.1 is directed to lead the evidence first and allow the Petitioner to cross-examine the witnesses and thereafter the Petitioner will lead his evidence in rebuttal and can be subjected to cross-examination.

16. As far as the ancilliary issue with regard to discovery and inspection of certain record and furnishing of better particulars and details, the learned Counsel Mr.Sanglikar for Respondent No.1 has very fairly stated that the Respondent No.1 will give all particulars, details and documents pertaining to Annexure III which is shown at Page 11 of the Compilation of list of documents relied upon by the Applicant before the learned Estate Officer. Similarly, Mr.Sanglikar has also made it clear that all the pleadings and all further particulars will be furnished to the Petitioner with regard to the pending cases mentioned in Annexure V of the aforesaid list of documents relied upon by the Applicant which is shown at page 18. In view of the same, the aforesaid controversy with regard to the discovery and inspection and furnishing of better particulars does not survive anymore. Even Mr.Dada makes it clear that now the only

grievance is with regard to compelling of the Petitioner to lead the evidence first.

17. Mr.Sanglikar, the learned Counsel for Respondent No.1 has submitted that the orders which are challenged before this Court are interlocutory orders and as such, this Court exercising the extra ordinary writ jurisdiction, ought not to interfere. In any event, even if later on the final order of eviction were to be passed, Mr.Sanglikar submits that the Petitioner can very well file an appeal before the learned Principal Judge of the City Civil Court in pursuance of Section 9 of the Public Premises Act. Mr.Sanglikar has contended that both the orders of the Estate Officer were procedural in nature and as such this Court exercising the extra ordinary jurisdiction should not interfere with the same. He also submitted that all the public bodies are following this practice of directing the occupants to lead the evidence first to establish that they are not in unauthorised occupation and hence the Respondent No.1 is also following the same procedure. Mr.Sanglikar brought to our notice the definition of unauthorised occupants as mentioned in Section 2(g) of the Public Premises Act and contended that the said section does not contemplate any different treatment for the genuine legal tenant. Hence it is the contention of the learned Counsel Mr.Sanglikar for Respondent No.1 that as per Section 4 of the Public Premises Act, the Petitioner ought to show cause as to why he is not in an

unauthorised occupation. Thereafter Mr.Sanglikar, the learned Counsel also submitted that the proceedings before the learned Estate Officer are not the Civil Proceedings and as such the provisions of Code of Civil Procedure and the Evidence Act would not apply, and the Respondent No.1 can merely tender a compilation of documents and the same should be treated as evidence on behalf of Respondent No.1. In support of his contentions, Mr.Sanglikar, the learned Counsel for Respondent No.1 referred to and relied upon various judgments of our High Court which are annexed to the affidavit in reply filed on behalf of Respondent No.1. However, Mr.Sanglikar has candidly admitted that only last three judgments were rendered after the aforesaid Statutory Guidelines of 30th May, 2002. As far as first judgment in the case of **M/s.Orient Longman Limited V/s.The Orient Insurance Co.Ltd.Ors.** dated 4th October, 2002 passed by this Court in Writ Petition No.2162/2002 is concerned, there is no issue as to who should lead the evidence first. In fact, even with regard to the issue regarding 30th May, 2002 Guidelines, the Division Bench has observed that the said issue about applicability of Guidelines can be argued before the Estate Officer. The above judgment will be of no assistance to the Respondent No.1. The second judgment referred to and relied upon by the learned Counsel for the Respondent No.1 is the judgment of this Court dated 25th June, 2002 in the case of **Orient Longman Limited V/s The Orient Insurance Company Limited and Ors. (Writ**

Petition No.2512/2002), and Book Point (India) Ltd.V/s.The Oriental Insurance Co.Limited & Ors.(Writ Petition Stamp No.16270/2002), wherein the issue was with regard to the Estate Officer directing the Petitioner to lead the evidence first. However, in Paragraph No.5 of the said judgment there is a clear observation of the Division Bench that there was satisfaction on the part of the Estate Officer that the Petitioners "were not in lawful possession or occupation of the premises". Obviously therefore the Petitioners were not the genuine lawful tenants. Even with regard to 30th May, 2002 Guidelines, the said issue was allowed to be agitated before the Estate Officer. Hence this judgment also will be of no assistance to Respondent No.1. The third judgment referred to and relied upon by the learned Counsel for the Respondent No.1 is a very cryptic order of the Division Bench refusing to interfere at a particular stage and the Petitioner was permitted to challenge the order by preferring an appeal. The said order does not indicate any facts. The said order also will not be of any assistance to Respondent No.1.

18. Mr.Sanglikar, the learned Counsel for the Respondent No.1 sought to contend that the learned Principal Judge can ultimately remand back any appeal filed under Section 9 of the Public Premises Act to the learned Estate Officer if the procedure adopted were to be erroneous. Mr.Sanglikar, the learned counsel for

Respondent No.1 has contended that all the judgments cited by Mr.Dada regarding the basic issue as to who should lead evidence first will not apply in the facts of this case, as those cases were dealing with various Rent Acts, whereas the present case is under the Public Premises Act. Under the aforesaid facts and circumstances, the learned Counsel Mr.Sanglikar has contended that this Court ought not to interefere with the orders of the Estate Officer, and accordingly the Petition of the Petitioner should be dismissed.

19. In rejoinder, Mr.Dada, the learned senior Counsel appearing for the Petitioner has brought to our notice that the Respondent No.1 is a company formed under the General Insurance Business (Nationalisation) Act, 1972 and he pointed out Section 23 therein, which reads as under:-

> "Power of Central Government to issue directions:- The Corporation and every acquiring company shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may give".

20. Mr.Dada, the learned Counsel for the Petitioner has emphasised that the Respondent No.1 being one of the acquiring company shall discharge its function and be guided by such directions with regard to matters of policy involving public interest as the Central Government may give. Hence, he submitted that 30th may, 2002 Guidelines are very much binding on the Respondent No.1. According to Mr.Dada, the learned Counsel for the

Petitioner, the contention of Mr.Sanglikar, the learned Counsel for Respondent No.1 that merely tendering of certain documents by applicant would amount to tendering of evidence in support of the case, is totally unsustainable in law. He brought to our notice the observations of the Hon'ble Supreme Court in the case of **M/s.Bereilly Electricity Supply Company Ltd.V/s.Workmen and Ors.- AIR 1972 SC 330,** in paragraph No.14, which read as under:-

> "But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also acording to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced."

21. Mr.Dada has also submitted that the notice has been issued to the Petitioner in public interest, for eviction. If that be so, the proceedings will have to be speedily disposed of. According to him the contention of Mr.Sanglikar that the Petitioner can wait till the Estate Officer passing an order and thereafter prefer an appeal before the Principal Judge of the City Civil Court, would not be proper and would be against public interest. Mr.Dada on the contrary has pointed out that in public interest it would be proper if this Court interferes at this stage to avoid further delay. According to him even if the Petitioner were to lose the matter finally, then the Respondent No.1 will be able to obtain the premises faster, which would be in furtherance of public interest.

22. After having heard the learned Counsel at length and after having considered all the submissions and various cases cited, as far as the ancilliary issue that is with regard to discovery and inspection of documents and providing of better particulars, Mr.Sanglikar, the learned counsel for Respondent No.1 has already made a statement that the Respondent No.1 will be furnishing all the documents and better particulars as mentioned herein above in Paragraph No.16. In view thereof the said grievance does not survive.

23. As far as the issue as to who should lead the

evidence first, we are concerned here with a case of a genuine lawful tenant and not that of a tresspasser or an unlawful subletee or an employee overstaying after retirement. In fact, a bare reading of the aforesaid 30th May, 2002 guidelines clearly indicates that the said guidelines have been framed primarily to prevent the public sector undertakings from misusing its power of eviction against the genuine lawful tenants. In that behalf a detailed guidelines have already been framed. These guidelines have been construed to be having a statutory force by a Division Bench judgment of this Court. In any event, the said guidelines are being followed by Respondent No.1, even according to Mr.Sanglikar. If that be so the said guidelines make it clear that as far as genuine and lawful tenants are concerned, the Respondent No.1 ought to establish and prove the grounds of eviction as prescribed under the State Rent Control Act. That can only be done if the Respondent No.1 adduces evidence in support of such grounds of eviction and thereafter the Petitioner would be able to rebut the same by leading evidence. The Hon'ble Supreme Court in the case of **Ashoka Marketing Limited** has made it abundantly clear that the Public Sector Undertakings cannot act arbitrarily and whimsically. The Supreme Court has also made it clear that Public Sector Undertakings cannot even act like the private landlords, and that they have to act fairly with regard to genuine lawful tenants. If that be so, the procedure to direct such lawful genuine tenants to lead

evidence first cannot be countenanced at all. Over and above, the judgment of the Supreme Court in **AIR 1987 SC 2016 - Ganpat Ram Sharma & Ors V/s.Smt.Gayatri Devi** has made it abundantly clear that the onus is very much on Respondent No.1 to initially establish the grounds of eviction. The same view has been reiterated in the judgments mentioned hereinabove of the Allahabad High Court, Delhi High Court and Madhya Pradesh High Court. The abovementioned Delhi High Court judgment very succinctly lays down the law as under:-

"One must remember that the initial burden to prove the ground of eviction is on the landlord and not on the tenant. Tenant cannot be asked to prove the negative."

24. The contention of Mr.Sanglikar that in all the above cases the Courts were dealing with the matters under the Rent Control Act whereas, the present matter arises under the Public Premises Eviction Act, and therefore the principles laid down in the Rent Act matters will not be applicable in the present case, cannot be sustained in the sense, the principles laid down in the above judgments though arising out of Rent Act would be applicable in the instant case in the light of 30th May, 2002 Guidelines which very clearly lays down that for the purposes of eviction of genuine lawful tenants, the grounds specified under the State Rent Control Act will have to be followed. If that be so, the above judgments will have a full relevance and would

be applicable in the facts and circumstances of the present case, as it is admittedly a case of eviction of a genuine lawful tenant.

25. As far as the objection of Mr.Sanglikar that the impugned orders are interlocutory and procedural in nature, and as such, this Court should not exercise the extra-ordinary jurisdiction, we do not agree with the same. Though the orders may be interlocutory and procedural in nature, however the same would cause severe injustice and would amount to travesty of justice and it would be absurd and against all cannons of justice to direct the Petitioner to lead evidence first, to prove the negative. The burden of proving such grounds would clearly be on Respondent No.1, initially. The above issue goes to the root of the matter, hence the Petition cannot be rejected on the ground that the orders impugned are interlocutory and procedural in nature, or that later an Appeal can be preferred under Section 9 of the said Act, as the impugned direction of Respondent No.2 is patently contrary to the said 2002 statutory guidelines, as the Petitioner is a genuine and lawful tenant, the principles of State Rent Act would apply.

26. It should be clearly remembered that in the present case, we are not dealing with an unlawful occupant,

illegal sublettee or an employee overstaying in the premises after services coming to an end, wherein the onus would be on such an occupant to lead evidence first to show that he is not an unlawful occupant, or not an illegal sublettee or that he is not overstaying in the premises. In normal cases of eviction of the above three categories under the Public Premises Evidence Act, the onus will be on the occupant to show that he is not in unlawful occupation or not an illegal sublettee or that he had not overstayed in the service quarters.

27. Under the aforesaid facts and circumstances of the case, we are clearly of the view, specially in the light of 30th May, 2002 Guidelines which are binding on Respondent No.1, that it is the Respondent No.1 who should lead the evidence first which will be subject to cross examination by the Petitioner, and thereafter the Petitioner will lead the evidence in rebuttal which will be subjected to cross-examination.

28. Under the aforesaid facts and circumstances, Rule is made absolute in terms of prayer clauses (a) and (b)(ii) & (iii), however with no order as to costs.

29. The learned Counsel for the Respondent No.1 prays for stay of this judgment and order. In our view it would not be just and proper to stay this order in public interest as the Respondent No.1 is seeking possession of the premises at the earliest.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)